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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/599,150      | 06/21/2000  | Stuart T. Linsky     | 22-0133             | 6920             |

7590 05/17/2004

Patent Counsel  
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EXAMINER

FERRIS, DERRICK W

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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2663

DATE MAILED: 05/17/2004

10

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/599,150

Applicant(s)

LINSKY ET AL.

Examiner

Derrick W. Ferris

Art Unit

2663

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 May 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.


Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

Continuation of 2. NOTE: Applicant addresses the issue that the finality of the Office action may be premature. The examiner respectfully disagrees. By way of further explanation, applicant had previously amended the claims to include new limitations thus making the rejection final since these new limitations usually require further searching and/or reconsideration. In the future, the examiner encourages applicant to clearly identify the claim limitations at issue, preferably by either quoting the exact limitation or providing a copy of the claim and then underlining the limitations at issue. This allows the examiner to clearly identify the issues in the claims. By way of example, in applicant's amendment filed 05/06/04 on pages 10-11 it is not clear what specific limitation(s) are at issue for claim 1. Instead applicant states that the claims have been amended to further emphasize what is believed to be the novel combination of the invention. Thus the examiner is left with the assumption that applicant is attempting to overcome the rejection by adding new limitations. In reviewing applicant's previous response the examiner notes a similar pattern in applicant's argument(s). Therefore the examiner concludes that the finality of the Office action as necessitated by amendment is proper. Similarly, the examiner concludes that applicant's current claim amendments filed 05/06/04 contain new limitations and thus require further reconsideration and/or search. To help further expedite prosecution of the application in the future the examiner encourages applicant to clearly identify the claim limitations at issue as well as pointing out examples in the applicant's specification on how the applicant solves said limitations at issue so that the examiner has a better understanding of the context from which applicant is attempting to argue. In addition, if applicant's amendments to the claims overcome the rejection that does not mean that the claims are automatically allowable. Instead the examiner may have to perform further searching based on the claim amendments since the scope of the claims may have changed. As the prosecution for this application is closed this is an issue because applicant amended the claims. Finally, with respect to applicant's amendment further consideration and/or searching need to be performed based on the newly added limitations beam hopping with respect to controlling the selection of downlink beams. Examiner encourages applicant to file a continuation so that the amendment to the claims may be considered..

  
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SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600 5/13/04